

[counsel listed on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE INC.

Defendant.

Case No. CV 10-03561 WHA

**JOINT STATEMENT REGARDING
SUPPLEMENTAL ORDER
REGARDING PATENTING
MARKING**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 Pursuant to the Court's December 6, 2011 Supplemental Order Regarding Patenting
2 Marking (Dkt. No. 641), Google and Oracle met-and-conferred in person regarding a procedure
3 and timetable regarding the marking issues, as directed by the Court. In doing, the parties
4 agreed to a procedure for identifying products that practice the asserted patents (or not). In light
5 of the parties' differing positions on the issue of trial timing, however, the parties were unable to
6 reach agreement on the timetable. The parties set forth their procedural agreement and respective
7 positions as to the timetable as follows:

8 **Agreement Regarding Procedure**

9 1. Oracle will provide to Google an identification, for each of the 26 asserted claims,
10 of each Oracle product, Oracle-licensed product, Sun product, or Sun-licensed product ("Oracle
11 Products") that practice or have practiced the claim. Oracle will also identify the fact witnesses
12 who possess information supporting Oracle's contentions that the Oracle Products practice or
13 have practiced the asserted claims.

14 2. Oracle will provide source code citations and/or other documentation supporting
15 Oracle's contentions that the Oracle Products practice the asserted claims. Oracle will also
16 provide a summary of any witness testimony they intend to elicit at trial from the witnesses
17 disclosed in Step 1.

18 3. Google will respond to Oracle and identify any other Oracle Products that Google
19 contends practiced any of the 26 asserted claims during the alleged damages period and identify
20 any products in Oracle's identification that Google contends do not practice the identified claims.
21 Google's response will specify which Oracle Products it contends do (or do not) practice the
22 asserted claims, and why.

23 4. Following Google's response, the parties will meet-and-confer regarding their
24 disclosures with the aim of preparing a stipulation of which Oracle Products practice the asserted
25 claims. The parties will jointly submit to the Court a list of the Oracle Products that they stipulate
26 practice the asserted claims, which shall have the effect of establishing that fact for all purposes at
27 trial, and a list of those Oracle Products for which there is a genuine dispute between the parties
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as to whether they practiced the asserted claims, along with brief explanations of the basis for each party's contention.

Oracle's Timetable Statement

Oracle proposes the following deadlines for the steps outlined above:

1. December 23, 2011.
2. December 30, 2011.
3. January 6, 2012.
4. January 13, 2012.

Oracle and Google are in agreement on all of the dates except for Step 2, the identification of source code citations and/or other documentation supporting Oracle's contentions. For Step 2, Oracle's engineers are double-checking the source code for the Oracle Products to confirm the precise portions that practice the asserted claim. They will need until December 30, 2011, to complete that process.

Google's Timetable Statement

Google proposes the following deadlines for the steps outlined above:

1. December 23, 2011.
2. December 23, 2011.
3. January 6, 2012 (or two weeks later).
4. January 13, 2012 (or one week later).

Google notes that this timetable is necessary if, as Oracle advocates, the trial begins on January 20, 2012. If the Court sets trial for a later date, Google is amenable to a later timetable, with Step 3 of the agreed-upon procedure to occur two weeks after Step 2, and Step 4 to occur to 1 week after Step 3.

The primary difference between the parties' proposed schedules is when Oracle must satisfy Step 2. Google believes December 30, 2011, is too late, particularly since Oracle has had since before it filed this lawsuit to determine whether its own products practice the asserted patents. In fact, Google's proposed timeline gives Oracle three more days than Oracle would have had under the timetable originally set by the Court. Second, Oracle's proposed procedure

1 has the effect of taking away a week for Google's response. In the parties' meet and confer,
2 Oracle had originally proposed and agreed to having Steps 1 and 2 occur as a single step, with
3 Google having at least two weeks to respond. Reversing course, Oracle now proposes separating
4 the disclosure into two sub-steps one week apart, with the actual substantive identification of
5 supporting evidence take place on the later date. In doing so, Oracle takes away one week of
6 Google's time to evaluate the evidence underlying Oracle's contentions. Not only is this unfair, it
7 threatens to render the procedure ineffective, making it impossible for Google to reach any
8 stipulation. And while Oracle may be willing to give Google this additional week, the timeline
9 then runs right into Oracle's proposed January 20, 2012 trial date.

10 In short, in order to be ready for a trial beginning in late January, the timetable for
11 addressing the marking issues must be more aggressive, such that these issues can be resolved at
12 least one week before trial. This is particularly important if, as Oracle argues, the Court conducts
13 a single consolidated trial on all issues, where these issues would impact opening statements.

1 Dated: December 20, 2011

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ATTESTATION

I, Daniel P. Muino, am the ECF User whose ID and password are being used to file this
JOINT STATEMENT REGARDING SUPPLEMENTAL ORDER REGARDING PATENTING
MARKING. In compliance with General Order 45, X.B., I hereby attest that Mattias Kamber has
concurred in this filing.

Date: December 20, 2011

/s/ Daniel P. Muino
DANIEL P. MUINO